IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 925 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GALJIBHAI KALAJI

Versus

STATE OF GUJARAT

Appearance:

MR US BRAHMBHATT for Appellant

MR KG SHETH, ADDL PUBLIC PROSECUTOR for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 27/06/2002

ORAL JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. This appeal is filed against a judgment and order of conviction of the present appellant under Section 302 of the IPC by Addl. Sessions Judge, Sabarkantha at Himatnagar on 11th October, 2001, in Session Case No. 42/2001.

2. Short facts leading to the conviction of the appellant are as under :

Deceased Indiraben wife of the appellant and daughter of Nanjibhai Hitabhai, was married to the appellant before six months from the date of filing of the complaint. It was alleged that during married life of Indiraben with the appellant, for 15 days, both spouses were happy and thereafter Indiraben was subjected to cruelty by the appellant - her husband and parents of the husband. It was alleged that appellant - husband and his parents were unnecessarily suspicious about the character of Indiraben and on that count not only she was mentally tortured but was physically beaten also. Indira once returned to her parents but having regard to her future life, after persuading her husband by her parents, she was returned to her in-laws. On 12th of November, 2000 Indiraben visited her parent's house at village Itawadi. She conveyed to her parents that appellant and his parents doubt her character and she was physically beaten. On the same day appellant visited his in-laws house and in the presence of the parents of Indiraben she was physically beaten with belt by appellant. At that time, the appellant stayed overnight and after a compromise in the presence of caste leaders and elder relatives, Indiraben was sent to her in-laws house with her husband. On 26th November, 2000 at about 11'O clock in the morning, a person of village Kundolpal to which Indiraben's in-laws belong had been to village Itawadi who conveyed to the parents of Indiraben that Indiraben had died and they should reach to Kundolpal. Therefore, with the caste leaders Medhaji Kalaji, Khimji Viraji, Babu Lalji, etc. the parents of Indiraben reached to village Kundolpal. They noticed that the dead body of Indiraben was lying in the court yard of residence of her in-laws. Indiraben's father Nanjibhai Hitabhai noticed that there was swelling on her back and throat. Indiraben's father suspected that Indira might have been murdered because she was many times subjected to cruelty and hence he filed complaint before Police Sub-Inspector

Shamlaji at Bhiloda. Thereafter, a postmortem was conducted in pursuance of the complaint by Dr. Dalabhai Khusabhai, Medical Officer, Bhiloda. Investigation was carried out by Dilipsinh Momaiyaji, the then PSI, Shamlaji. Ultimately a charge sheet for the offence punishable under Section 302 read with Section 34 was originally submitted against the present appellant and Kalaji Manuji Bodat as well as Vajiben wife of Kalaji Manuji, both accused No. 2 and 3 who are the parents of original accused No.1 appellant herein. The charge was framed and read over vide Exh.5 to the accused. All of them pleaded not guilty and hence including the appellant, all the three accused were tried for the above said charges by Addl. Sessions Judge, Sabarkantha at Himatnagar. After recording the evidence and recording statements of the accused under Section 313 of the Cri. Procedure Code and hearing the parties, learned Addl. Sessions Judge, vide his judgment and order dated 11th October, 2001 came to the conclusion that the original accused Nos. 2 and 3, parents of present appellant were not guilty for the charge levelled against them but the present appellant original accused No.1 was guilty for the charges under Section 302 of the IPC and, therefore, he was sentenced to undergo imprisonment for life and Rs. 1,000/- by way of a fine, in default, to undergo six months imprisonment.

3. Being aggrieved and dissatisfied with the above said order, the present appellant has filed this Appeal from jail vide his communication dated 5th December, 2001. This appeal is at admission stage. Learned advocate for the appellant Mr. U.S.Brahmbhatt was heard at length.

4. Record and proceedings of the Trial Court are available with us and we have carefully gone through the evidence recorded by the Addl. Sessions Judge. We have also considered the contentions raised on behalf of the appellant.

5. Having gone through the entire record and proceedings and re-appreciating the evidence, two crucial points have arisen for our determination. (1) Whether the death of Indiraben was culpable homicide, and (2) Whether the present appellant was guilty for the death of his wife Indiraben.

6. The Trial Court in oral evidence has examined Nanjibhai at Exh. 16, his complaint is produced at Exh. 17, witness No.2 Kodarbhai Ditabhai - Exh. 18, who is brother of the complainant, witness No.3 Medhaji Kalaji,

who is also cousin brother of the complainant, witness No.4 Dalabhai Khushabhai - Exh. 20, who is a Doctor, who performed postmortem on the dead body of Indiraben on 27.11.2000, post mortem note is produced at Exh.22, witness No.5 Manuben Savjibhai, who happens to be sister of appellant No.1 as well as wife of the brother of deceased Indiraben is examined at Exh.24, witness No.6 Sanjay Mangaji, a panch, is examined at Exh. 25, panchnama of scene of offence is produced at Exh.26, PW-7 Ramjibhai Dhulaji also a panch is examined at Exh.27, Witness-8 Taraben Lajrasbhai, PSO of Bhiloda Police Station is examined at Exh. 28, who recorded Entry at Exh.29 by which it comes out that on 26.11.2000 present appellant informed the police that deceased Indiraben had severe pain in her abdomen and when she was taken to hospital at village Kundolpal, on way she expired. This entry is dated 26th November, 2000 at 2100 hours. That entry is produced at Exh.29, PW-9 Kantibhai Kubherbhai a police witness is examined at Exh.30, who had recorded the complaint of complainant and Investigating Officer PW-10 Dilipsinh Momaiya - Exh.32 is examined.

7. Now re-appreciating the evidence of Doctor who conducted postmortem of deceased, it is clear that postmortem was performed on Indiraben on 27th of November, 2000 at about 1210 hours to 1400 hours. He deposed that the dead body was received by him at 1200 hours on 27th of November, 2000. He immediately started the post mortem of the dead body. Rigor mortis was seen and there was P.M. lividity present on back side of the dead body. She had no injury externally, but her spleen and left kidney was ruptured. The Doctor stated that the cause of death was due to injuries to the spleen and left kidney leading to hemorrhage and shock. Doctor also deposed that injuries to the spleen and the left kidney was sufficient in ordinary course of nature to cause death. These injuries were possible by fist and kick blows. She was bleeding from mouth and ears due to the rupture of kidney and spleen. The Doctor was extensively cross-examined by the defence. Very important aspect which comes out from the cross-examination. The Doctor emphatically and categorically denied the suggestion of the defence that the injury which Indiraben suffered could not be caused by beating seriously meaning thereby that injuries could have been caused by beating. The Doctor further categorically stated that there were no sign of any disease in Indiraben while he conducted post mortem though Doctor has expressed the possibility on general question of defence counsel that if the spleen is enlarged and something is struck on such spleen, there may be possibility of hemorrhage on spleen. However

nothing is found on record that Indiraben had an enlarged spleen. Her spleen was normal in size as per the postmortem report.

8. While considering the other evidence on record along with the evidence of this Doctor, it clearly surfaces that Indiraben had undoubtedly a history of cruelty - physical as well as mental by her husband present appellant and his parents. Almost all the witnesses examined by the prosecution support this case and, therefore, it must be concluded that the prosecution could successfully establish that in the preceding six months of her death, Indiraben was subjected to cruelty including physical beating. Irrespective of the parents of Indiraben examined as witnesses in this case, witness Manuben Exh. 24, sister of appellant No.1 has supported the prosecution case that in her presence Indiraben was beaten by appellant No.1 by belt and she intervened and persuaded appellant No.1. Manuben is wife of the brother of Indiraben. Having considered this background of the case and having considered opinion of an expert particularly because of death by hemorrhage due to rupture of spleen and left kidney along with clear opinion of expert i.e. PW4 Dr. Dalalbhai Khushabhai Exh.20 that those internal injuries were probable by fist and kick blows, that Indiraben had no disease at all when her dead body was examined by him, necessarily establishes that death of Indiraben was culpable homicide and not accidental or other wise a death in any other manner. With this, we are required to consider the defence theory advanced during cross-examination of the witnesses and by an entry to Bhiloda Police Station, which is placed at Exh.29. The appellant attempted to create a defence that Indiraben was patient of some disease and on 26th November, 2000, there was a shooting pain in her abdomen, and while she was being taken to hospital at village Kundolpal by appellant No.1, Indiraben died on way to hospital. This defence is not probable or cannot be relied upon because of creditworthy and confidence inspiring evidence of the Doctor who in cross-examination categorically stated that Indiraben had no disease at all when her dead body was examined by him. The Doctor did not attribute the death of Indiraben to some disease. In fact, her spleen and left kidney was ruptured. On the contrary, Doctor emphasized the possibility that the spleen and kidney could be ruptured if blows are given on such part of the body and hence the defence taken by the appellant No.1 vide Exh. 29 is of no avail to him. The second defence was taken by the appellant in respect of injuries received by Indiraben due to fall in the field. This defence and possibility

of such occurrence also can be ruled out because the Doctor deposed that there were no external injury marks on the body of Indiraben. Had Indiraben fallen in the field then there would have been some injury marks on her body. Therefore, this defence is also of no avail to the accused.

9. Kidney and spleen are the organs of human body protected by many layers of muscle etc. In ordinary course of nature by simple injury spleen or kidney cannot rupture and, therefore, the opinion of the Doctor is quite reliable, that hemorrhage due to rupture of kidney and spleen which Indiraben had, may be due to fist and kick blows. This is more so because hard kicks and fist blows, though they may not leave marks on the body, can cause internal injuries which Indiraben had suffered and hence the cumulative effect of this discussion is, the death of Indiraben was a culpable homicide and not a natural or an accidental death.

10. So far as the next point is concerned, we may again refer to the facts established by the prosecution through evidence. It could be established by the prosecution that married life of Indiraben was in doldrums and facing very rough weather. A fact beyond reasonable doubt is established by the prosecution that deceased Indiraben was subjected to cruelty mental as well as physical, so much so that Manuben, PW-5, Exh. 24, real sister of appellant accused No.1, admits that Indiraben was subjected to cruelty. With this background, the fact clearly emerges that both the spouses Indiraben and appellant were staying together. Meaning thereby that the appellant was in absolute proximity with the deceased Indiraben when she met with death. It is not the defence of appellant No.1 or any suggestion that he was not around Indiraben when her death took place. Exh. 29 the Police Diary entry of Bhiloda Police Station further confirms the fact that when the death of Indiraben took place, appellant No.1 her husband was with her. While the Trial Court confronted the accused with these circumstances appearing against appellant, he denied and explained that he does not know anything about this. No other reasonable explanation at all came forward from the present appellant. When specially the appellant was confronted with the evidence of Dr. Dalalbhai Khushalbhai, PW4, Exh. 20, he simply said that the evidence of Doctor was not true. In general question also which were asked by the Court with a view to give opportunity to appellant to offer explanation, the appellant simply denied those circumstances. Therefore, when there is a history of

subjecting Indiraben to cruelty which included physical torture, when it established that the death of Indiraben is culpable homicide and due to the rupture and haemorrhage of spleen as well as left kidney and when it is established that the husband appellant was with Indiraben, proper explanation to the injuries caused to Indiraben was required from the appellant which appellant instead of explaining, simply evaded the circumstances brought against him by merely saying that the evidence of a Doctor and other witnesses was not true. In these circumstances, the Trial Court rightly relied on a decision of the Supreme Court in the case of RAM KUMAR MADHUSUDAN PATHAK vs. STATE OF GUJARAT, reported in 1998 Cri. L.J. 4048, wherein the Supreme Court ruled that when it is established that the husband and wife are together and there is no possibility of intervention of third party between the spouses, and if under suspicious circumstances, the death of wife is caused, and then the husband advances a plea that wife died a natural death, then the burden lies on the husband to prove that her death is a natural death. The facts of this Supreme Court decision are similar to the facts of this case, wherein it is established that Indiraben and appellant were together, no third party intervention was possible and vide Exh.29 husband advanced a plea that due to pain in abdomen while taking to hospital on the way Indiraben died. When it is established by the expert evidence that the death of Indiraben is culpable homicide, then it was the duty for the appellant to explain the circumstances, which he miserably failed and, therefore, he was rightly held guilty by the trial court for the offence under Section 302 of the IPC. Though there is no eye witness or direct evidence in prosecution case,, but the prosecution has, as above said, been able to complete the chain of circumstantial evidence, raising finger at the appellant that the appellant and he alone must be guilty of the crime, and that further, the circumstances are at the same time inconsistent with the innocence of the appellant. Therefore in our considered view there is no earthly reason to interfere with the order and judgment impugned of the trial judge.

11. In this view of the matter, we do not interfere with the judgment and order passed by the learned Addl. Sessions Judge, Sabarkantha, in Sessions Case No. 42/2001 on 11th of October, 2001 holding the present appellant guilty for the offence under section 302 of the IPC and sentencing him as aforesaid. In the result, this Appeal stands dismissed.

(Y.B.Bhatt,J.)

(J.R. Vora,J.)

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